83-1177

No. 84-

In The

Supreme Court Of The United States

JANUARY TERM, 1984

ABRAHAM COHEN

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MAXWELL HEIMAN
43 Bellevue Avenue
P.O. Box 1557
Bristol, CT 06010
(203) 589-4343
Attorney for Petitioner

Of Counsel:

WILLIAM J. TRACY, JR.
Furey, Donovan & Heiman, P.C.

QUESTIONS PRESENTED

1. Is testimony concerning a rug having a value of less than $5,000.00 material to a grand jury investigation, of whether or not the rug was stolen and moved in interstate commerce in violation of 18 U.S.C. Section 2314?

2. May the government be permitted to introduce evidence from which the jury might infer a theft of money, not alleged in the indictment, in order to support an inference that the defendant stole a rug, in order, then, to support an inference that the defendant knowingly testified falsely about the sale of the rug?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No. 84-

IN THE

SUPREME COURT OF THE UNITED STATES

January Term, 1984

ABRAHAM COHEN
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE SECOND CIRCUIT

The petitioner, Abraham Cohen respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Second Circuit entered in this proceeding on November 16, 1983.

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit is not published

or reported; it appears in the appendix hereto as Appendix A. The petitioner's Motion to Dismiss and Motion for Judgment of Acquittal were denied without opinion. The petitioner's objection to the admission of exhibits was overruled; the district court's oral opinion appears in the appendix hereto as Appendix B.

JURISDICTION

The decision of the Court of Appeals for the Second Circuit was entered on November 16, 1983. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

PROVISIONS OF STATUTES AND RULES

Title 18 U.S.C. Section 2314 (in pertinent part)

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more...shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

Title 18 U.S.C. Section 1623

(a) Whoever under oath (or in any declaration, certificate, verification or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code [28 USCS §1746])

in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Federal Rules of Evidence, Rule 404

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan,

knowledge, identity, or absence of mistake or accident.

STATEMENT OF THE CASE

STATEMENT OF FACTS

A Grand Jury convened in the District of Connecticut, at Hartford, to investigate certain allegations concerning the conduct of the Probate Court for the 29th Probate District of Connecticut. The Grand Jury summoned the defendant to appear before it.

During the course of his testimony, the defendant was shown an oriental rug [hereinafter, "the rug"]. He was asked whether the rug he was shown was the same rug that he had sold to Robert Ciechowski in October, 1979. The defendant testified that it was not the

same rug. Robert Ciechowski had testified that it was.

At trial, witnesses for the government claimed that the rug was the same rug as was previously situated in Marion Reiner's apartment. Upon Ms. Reiner's death, the defendant had been appointed temporary administrator of her estate. He was subsequently relieved when a permanent administrator was appointed. Thereafter, he was engaged by the administrator to assist in selling the furniture and other personal property located within the apartment. With the administrator's permission, the defendant placed some of his own furniture in the apartment and contacted various persons to secure bids.

Robert Ciechowski, a Connecticut antique dealer, was one of the persons contacted and was asked to submit individual bids on each piece within the

apartment. In July, 1979, the defendant notified him that he had successfully bid on a number of items and arranged to close the transaction. Robert Ciechowski paid $9,000.00 for the items by check made out to "Al Cohen - Probate Court". The defendant testified that Ciechowski's successful bids aggregated $7,500.00 on the estate property and $1,500.00 on his own. Ciechowski testified that there was one rug on which he submitted a bid but did not purchase. The defendant was subsequently paid a commission on the $7,500.00 sale by the administrator.

In October, 1979, the defendant contacted Robert Ciechowski and asked if he was interested in purchasing a rug. Ciechowski inspected it at Cohen's house and, when they agreed upon a price, bought that rug. Ciechowski testified that he later sold that rug to a New

York rug merchant for $4,500.00; the merchant testified that he transported the rug to New York and sold it to another New York rug mercha.. The defendant testified that the rug he sold to Ciechowski from his house was different in size, pattern and color from the rug in evidence.

Through Exhibits 16A, 16B, 17A, 17B, 17C, 20, 21 and 22, the Government sought to establish the following sequence of events: The defendant deposited the $9,000.00 check from Ciechowski into the Probate Court Escrow Account and withdrew $9,000.00 by check made to cash. The defendant deposited the $9,000.00 check into the New Park Investigative Services account and withdrew $7,350.00.

Exhibit 16A is a copy of the monthly statement for the Probate Court Escrow Account for June 19 to July 31,

1979, attached to which was a deposit ticket, the item which accompanied the deposit, and a check drawn against the account. The deposit ticket showed a deposit of $9,000.00; the item attached was the $9,000.00 check from Robert Ciechowski to "Al Cohen - Probate Court". The check was for $9,000.00. The statement showed both transactions.

Exhibit 16B is copy of the monthly statement for the Probate Court Escrow Account for September 28 to October 31, 1979.

Exhibit 17A is a copy of the monthly statement for the New Park Investigative Services Account for June to July, 1979.

Exhibit 17B is a copy of the $9,000.00 drawn against the Probate Court Escrow Account.

Exhibit 17C is the microfilm record of a deposit showing a $9,000.00 deposit.

Exhibit 20 is the signature card for the Probate Court Escrow Account bearing, as one authorized signature, the signature of the defendant.

Exhibit 21 is the signature card for the New Park Investigative Services Account bearing, as an authorized signature, the signature of the defendant.

Exhibit 22 is a ledger or checkbook containing handwritten notations concerning the checking transactions in the Probate Court Escrow Account. Although the checkbook was arranged in approximate chronological order, by check number, it did not contain a notation of the $9,000.00 transaction. The account checks had to be manually numbered and the checks did not always

correspond to the same numbered entries in the notebook.

STATEMENT OF PROCEEDINGS

The Grand Jury returned a true bill of indictment charging the defendant with one count of perjury, a violation of Title 18, United States Code, Section 1623. The defendant entered a plea of not guilty and elected to be tried to a jury.

The defendant moved to dismiss the indictment. The District Court denied the motion.

During the course of the trial, the government sought to introduce Exhibits 16A, 16B, 17A, 17B, 17C, 20, 21 and 22 as full exhibits. Over the defendant's timely objection, the exhibits were admitted and witnesses were permitted to testify with respect to them. The

defendant subsequently moved to strike the exhibits and testimony; the motion was denied.

Upon completion of the Government's case, the defendant moved for a judgment of acquittal. The motion was denied. At the close of all evidence, the defendant renewed his Motion for Judgment of Acquittal which was denied.

The jury returned a verdict of guilty. The District Court adjudged the defendant guilty and ordered the defendant imprisoned for a period of three years; execution of the sentenced is suspended after three months and the defendant placed on probation for a period of three years. The District Court also ordered the defendant to pay a committed fine of $3,500.00 prior to termination of probation.

From the judgment, the defendant appealed to the Court of Appeals for the

Second Circuit. On November 16, 1983, the Court of Appeals affirmed the judgment.

REASONS FOR ALLOWANCE OF WRIT

I.

A perjury conviction may not be premised upon testimony not material to a proper inquiry by the Grand Jury. United States v. Koonce, 485 F.2d. 374, 381 (8th Cir.1973). United States v. Byrnes, 644 F.2d. 107, 111 (2d. Cir. 1981). The government bears the burden of establishing the materiality. United States v. Freedman, 445 F.2d. 1220, 1227 (2d. Cir. 1971), United States v. Ostertag, 671 F.2d. 262, 264 (8th Cir. 1982). Materiality is demonstrated if the question posed to the defendant was such that a truthful answer would have

helped the inquiry or a false response hinder it. United States v. Byrnes, supra at 111, United States v. Berardi; 629 F.2d. 723, 728 (2d. Cir. 1980). A statement is material if its natural effect or tendency is to influence, impede or dissuade the Grand Jury from pursuing its legitimate investigation. United States v. DeMauro, 581 F.2d. 50, 53 (2d. Cir. 1978). The government must establish the statement, the scope of the Grand Jury's inquiry and the nexus between the two. United States v. Berardi, supra at 727.

By a transcript of the Grand Jury proceedings, the government established the statements of the defendant. By the affidavit of the Assistant United States Attorney who conducted the proceedings before the Grand Jury, the government established the scope of the Grand Jury's inquiry. The claimed nexus was

that "it was a material matter to determine whether and how the rug was stolen, who stole it and the circumstances reflecting the movement and transfer of the rug...." See, Appendix D. The affidavit centers the scope of the inquiry directly upon a question of a violation of 18 U.S.C. Section 2314.

Federal jurisdiction over the claimed transaction would have existed only if there had been an interstate transportation of stolen goods having a value of $5,000.00 or more. 18 U.S.C., Section 2314, United States v. Squires, 581 F.2d. 408, 409, 411 (4th Cir. 1978). The value of the goods is to be determined either at the date of transportation or the date of the theft. United States v. McMahon, 548 F.2d. 712, 714 (7th Cir. 1977). In any event, the

value is to be determined at the time of the completion of the crime.

In this matter, the offense involving interstate transportation of stolen goods, if any was committed, was certainly complete at the time of the sale by the Connecticut dealer to a New York dealer for transportation out of Connecticut. It is not disputed that that sale was an arms-length transaction at a price of $4,500.00. It was not until sometime later, when the rug was sold in New York to another New York dealer, that the jurisdictional amount was reached.

The defendant's testimony was immaterial since the value of the allegedly stolen rug had already been fixed at below the jurisdictional amount. The District Court erred in not granting the defendant's Motion to Dismiss and Motion for Judgment of

Acquittal. The Court of Appeals erred in upholding the decision.

II.

In the course of the trial, the district court permitted certain exhibits into evidence over the defendant's objection.

The government claimed that the sequence of deposits and withdrawals shown by the exhibits demonstrated a motive for the defendant to testify falsely before the Grand Jury, leading to an inference that the testimony was knowingly false. The District Court permitted the exhibits as evidence of a motive to testify falsely. The Court of Appeals upheld the ruling.

The vice of the court's ruling is that it permitted the jury to infer that the defendant misappropriated the

proceeds of the sale of the Reiner apartment property and, then, infer from that inference that he knowingly testified falsely about a rug which was not a part of the $9,000.00 transaction. The inference that the defendant knowingly testified falsely about a rug does not logically follow even from the inference that that he may have misappropriated unrelated sums of money. The exhibits bear no relation to the subject of the indictment unless the government is to be permitted to establish a propensity of the defendant to steal which led both to the theft of the rug and the subsequent false testimony.

"Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith: Federal Rules of Evidence, Rule 404(b),

United States v. Corey, 566 F.2d. 429 (2d. Cir. 1977).

The court permitted the exhibits as evidence of motive. However, the exhibits could not have evidenced a motive without first being used as evidence of a propensity to steal from which the jury would be asked to infer the claimed theft said to give rise to the motive.

CONCLUSION

For all of the reasons set forth, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Petitioner, Abraham Cohen

By Maxwell Heiman
His Attorney
43 Bellevue Avenue
P.O. Box 1557
Bristol, CT 06010
(203) 589-4343

OF COUNSEL

William J. Tracy, Jr.
Furey, Donovan & Heiman, P.C.
43 Bellevue Avenue
P.O. Box 1557
Bristol, CT 06010
(203) 589-4343

No. 84-

In The

Supreme Court Of The United States

JANUARY TERM, 1984

ABRAHAM COHEN

v.

UNITED STATES OF AMERICA

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the day of November, one thousand nine hundred and eighty three.

Present: Hon. Thomas J. Meskill
Hon. Lawrence W. Pierce
Circuit Judges
Hon. Charles M. Metzner
District Judge*

Circuit Judges,

UNITED STATES OF AMERICA,

Appellee

-v- 83-1282

ABRAHAM COHEN,

Defendant-Appellant.

O R D E R

Abraham Cohen appeals from a

*Of the Southern District of New York, sitting by designation.

judgment of the United States District Court for the District of Connecticut, Warren W. Eginton, Judge, convicting him after a jury trial of one count of perjury, 18 U.S.C. §1623. Cohen alleges that the trial court erred in denying his motions to dismiss the indictment, for a judgment of acquittal, and for a new trial, and that it erred in admitting certain exhibits into evidence and in denying Cohen's subsequent motion to strike them and the testimony related to them. We affirm.

Cohen claims that the rug was not worth $5,000 and could not be the subject of a federal crime under 18 U.S.C. §2314. Therefore, any statements he made concerning the rug could not be material to the grand jury investigation. That investigation concentrated on a wide range of activities connected with the Hartford

Probate Court, and Cohen's testimony was material to the scope of the inquiry. The fact that Cohen could not have been indicted for violation of Section 2314 is not determinative in this case of the issue of materiality.

Cohen further asserts that the district court erred in admitting certain banking records into evidence. We are reluctant to overturn an evidentiary ruling absent a showing of "an abuse of the district court's broad discretion in these matters," United States v. Aulet, 618 F.2d. 182 (2d. Cir. 1980). Under Fed. R. Evid. 404(b), evidence of other acts may be admissible, among other purposes, to show motive, opportunity, plan, or knowledge. We do not find that Judge Eginton abused his discretion in ruling the challenged exhibits admissible. Further, he did not abuse his discretion

in holding that Rule 403 would not block their introduction. See United States v. Sindona, 636 F.2d. 792, 800 (2d. Cir. 1980), cert. denied, 451 U.S. 912 (1981).

We point out that if the admission of these exhibits had constituted error, that error would not have been such as to warrant reversal under Fed. R. Crim. P. 52(a). To reverse a conviction because of the trial court's error in the admission of evidence, that error must have affected the judgment. United States v. Robinson, 544 F.2d. 611 (2d. Cir. 1976). rev'd on other grounds, 560 F.2d. 507 (2d. Cir. 1977), cert. denied, 435 U.S. 905 (1978); See also United States v. Mangan, 575 F.2d. 32, 45 (2d. Cir.), cert. denied, 439 U.S. 931 (1978). The proof was overwhelming that the rug came from the Reiner estate. Even if it had been error to admit the

exhibits, their absence would not have affected the judgment.

Finally, Cohen contends that the evidence adduced at trial was insufficient for a jury to find beyond a reasonable doubt that he knew of the falsity of his statements to the grand jury at the time that he made them. Viewing the evidence in the light most favorable to the government, Glasser v. United States, 315 U.S. 60, 80 (1942), we find this contention without merit.

Judgment affirmed.

/s/ Thomas J. Meskill
Circuit Judge

/s/ Lawrence W. Pierce
Circuit Judge

/s/ Charles M. Metzner
District Judge

APPENDIX B

COURT'S RULING ON MAY 17, 1983

RE: CBT RECORDS

THE COURT: So I will be admitting this evidence that Mr. Dabrowski is trying to offer. There are several cases. The Clearfield case, which is cited in the Requests to Charge by Mr. Heiman, is a case that is properly cited for what it's set forth in his request for, but it's not a case that involves an 18 United States Code 1623 perjury before the Federal Grand Jury situation.

However, the Kelly case is very important and is very much in point. It is a 1623 case. However, there are a lot of other cases, including one of the Second Circuit, which although it is not a 1623 case, is cited by a later case in another Circuit coming out of the

Watergate situation, which is a 1623 case.

So looking at the cases, some of the cases go pretty far afield on collateral issues because of the importance of the Government proving the knowingly false statement to a Grand Jury.

The general rule in a criminal case is that motive is not important in a criminal case, because a person could commit a crime with the best of motives. But that's not true where you're dealing with a false statement situation, whether you're dealing with any ordinary perjury case or a case which involves a Grand Jury. There the motive is quite important and several courts have commented upon it.

One case, as an example, is a case which has a dissent in it and which shows how difficult it is to make these

balancing situations when you get too remote. This case, I think, involves a situation far more remote than the one that we face here, and the case I refer to is United States versus Jenkins, a Fourth Circuit case in 1978. 579 F.2d. 840.

There they had to go very far afield into hearsay testimony. as a matter of fact, the basis of the dissent is that it was hearsay and the majority felt that it was important under the balancing act under the Federal Rules of Evidence to allow it in because of the importance of knowing a state of mind at the time that the statement is made.

So the Jenkins case is an interesting case. It would not standing alone be that significant, but it goes as an example of showing how far you can range in permitting the Government to

try to prove the knowing aspect of the false statement.

The case which I found very interesting is a very recent -- well, not so recent, but as recent as any of the others. United States versus Koonce. As a matter of fact, a case in which Judge Duncan, who was then a trial lawyer, represented the defendant Koonce in that case.

This is a case that was decided by the Eighth Circuit in 1973. It's reported at 485 F.2d. 374, and it points out that the materiality is a matter for the Judge, not for the jury, which is what counsel have been telling me, and that certainly is borne out by this case, which is typical of many others holding that materiality is a question of law for the Judge, but it does contain factual aspects and so the Judge must hear all the evidence along with

the jury, if it happens to be a jury trial. Many of these are not jury trials at all. They're entirely tried to the Court, I suspect, because of the necessity of otherwise dividing up the responsibilities.

But in this one where it was tried to a jury, it was held that the materiality is a question of law for the Court, that the Court must take in the background of the factual aspects.

And it's pointed out that it's very important that the Government prove that there was a deliberate false swearing before a Grand Jury. That is an essential element.

The case which is cited by Mr. Heiman of United States versus Kelly is the most recent of the cases. That's a Ninth Circuit case in 1976, reported at 540 F.2d. 990, and they emphasize at page 994 that, "An accused can be

convicted of perjury under 1623....", which is the statute we're dealing with, "...only if his statement to the Grand Jury was knowingly false, and you should be generous in admitting circumstantial evidence to get to that question of actual knowledge." And circumstantial evidence is, of course, quite common in a criminal matter.

The final two cases, one of which is a Second Circuit case and the other of which is the Watergate case that cites it, are the case of United States versus Sweig, which is the Second Circuit case, in 1971, reported in 441 F.2d. at 114, and as I said before, it is not a 1623 case. It's a straight perjury case, and they talk in that case about, "The only ways a defendant's knowledge of the falsity of a statement can be proved is through circumstantial

evidence. The state of mind must be inferred from statements and actions."

And it says very importantly here that, "The inference may come from proof of the objective falsity itself or from proof of a motive to lie and from any other facts tending to show that the defendant knew things that he claimed not to know. Of course, that would apply to knowing that something is actually false as distinct from not knowing at all."

That case, as I say, was not a 1623 case. So it's interesting that it is cited with approval in a 1623 case, which is one of the Watergate cases. It happened to be the Dwight Chapin case. He got a lot of publicity at the time, a lot of you may remember as being supposedly a fairly innocent, well down the line character in the White House

Staff. But he was convicted and his conviction was affirmed.

It was tired by Judge Gerhard Gesell in the District of Columbia Court, and the decision affirming Judge Gesell is United States Court of Appeal District of Columbia Circuit in 515 F.2d. at 1274. And at 1284 in affirming the Chapin conviction, which was for perjury before a Grand Jury, false statement to a Grand Jury, the Court says: "The falsity of an "I do not recall." answer must be proven by circumstantial evidence."

And then they quote the quote that I just gave from United States versus Sweig, again emphasizing that the motive is a very important aspect of this type of case.

All right. Those are the decisions. I found nothing opposed to those decisions, and I will permit this

evidence to come in. Now, are we ready for the jury?

MR. HEIMAN: Well, If Your Honor please, just so I have a record that makes good sense, with all respect to the Court, I think that the case that Your Honor cites, Chapin, is not in point because, of course, that is an answer in which, as I recall the Chapin case, where the fellow said, "I don't know.", and therefore, it was necessary to prove the motivation.

With respect to the other cases that Your Honor cites, Your Honor correctly pointed out that one can be convicted with the best of intention or motive. And secondly, in this particular instance, the indictment alleges actions that occurred in October of 1979, and the evidence which is attempting to be adduced involves what Mr. Dabrowski claims are the commission

of other crimes because as I recall his statement, that Mr. Cohen together with others conspired to loot estates in the Hartford Probate Court. I submit that's evidence of another crime which is not similar in nature and, therefore, are not admissible. In addition to that, they are remote in point of time.

THE COURT: All right. I looked over my whole notes of the testimony, some of which Mr. Dabrowski had alluded to and reminded me of, but I looked over the rest of it.

On your first point, there is no distinction that I could find in the cases and, indeed, no distinction that would be logical to the Court as between a failure to recall type of answer to the Grand Jury and an actually false statement to the Grand Jury. As a matter of fact, the actually false statement may be even more difficult for

the Government to prove on a knowingly basis.

So I think the Court is quite justified in being liberal in permitting the Government to try to prove the knowingly aspect of a false statement to a Grand Jury and showing the motive for such a false statement.

On your second point, I do not think that this proposed evidence as I've heard it so far is as remote as that which I cite in some of the other cases that I just referred to. Indeed, there does seem to be a claim through the testimony of many of the witnesses that the Reiner Estate was involved, and we've had testimony that Mr. Cohen was involved and Mr. Ciechowski was involved with the Reiner Estate, and I think there is enough of a connection with this rug and the other articles in the

Estate for me to permit Mr. Dabrowski to put this evidence in.

APPENDIX C

I N D I C T M E N T

The Grant Jury charges that:

ONE COUNT

1. On or about December 16, 1981, at Hartford, in the State and District of Connecticut, ABRAHAM COHEN, the defendant herein, which under oath in a proceeding before a Grand Jury of the United States of America, knowingly did make false material declarations, that it:

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the District of Connecticut violations of the laws and criminal statutes of the Unites States of America.

3. It was a matter material to the Grand Jury's investigation to determine whether a certain Kirman rug.

which rug was shown to Abraham Cohen during his appearance before the Grand Jury, had bee sold by Abraham Cohen to Robert Ciechowski in October, 1979.

4. At the time and place aforesaid, Abraham Cohen, while under oath as a witness, did knowingly declare before the said Grand Jury with respect to the aforesaid material matter, as follows:

(Statement by the Assistant United States Attorney)--

The record should reflect that at this particular time, we have taken the only rug that has ever been before this Grand Jury, so there will be no confusion as to exhibits, and have laid it out as best we can in here.

I realize it's up against the wall here, but is it sufficient for

you to either -- to comment upon it?

THE WITNESS: I certainly can.

Q Do you recognize it?

A That looks like the rug that he bought with the stuff that he had bought from the apartment. The rug that I sold him was reddish-brown and it had I don't remember seeing any white spots to it.

Q What you're saying is this is not you are absolutely positive this is not --

A I am 100 percent sure that is not the rug that I sold him.

Q This is not the rug you sold him from your house on October of 1979 for three or four thousand dollars, depending on whose price is right; is that correct?

A That is correct.

Q Now, you did indicate that while it is not that rug, you did recognize it, though?

A Yes, it looks similar to it, because the one he bought was a pretty-colored rug. The one I sold, although it was an antique rug, it wasn't appealing like this one is. I'm not positive that's the one he bought, but --

Q Well, wait a minute. Now you're positive he didn't buy it from your house?

A He bought it from the estate. I'd not swear it's the same rug, but it looks similar because of the color. That white makes it very effective. And mine, I don't think, was that large. That's a huge rug.

Q So you think that this rug is was either identical to or similar to a rug that he purchased in July at 23 Oakwood Avenue?

A Yes, I would say that. Similar to it, but I couldn't swear it's the same rug.

Q There's no question this is not the rug that you sold him in October -- October of 1979?

A That's correct.

(Transcript at 50-52)

* * *

Q Let's just go back to the rug that is still in the Grand Jury room that was laid out, just to be clear on it. Is there any question in your mind as to the fact that that rug was not the rug that was sold to Mr. Ciechowski at your house in October of 1979?

A Positively.

Q No question about that?

A No question about that.

Q So if Mr. Ciechowski were to say that hew was absolutely positive that that rug was sold to him by you at your house in October of 1979, he is either mistaken or he is lying?

A That's correct.

(Transcript at 103)

* * *

Q And Ciechowski is either mistaken or lying to us when he tells us that that rug, the rug that is in this Grand Jury room right now, came without a question in his mind from your house in October of 1979?

A That is definitely not true.

Q No question about it.

A That is not the rug I had.

(Transcript at 116)

* * *

Q And the rug that is in this Grand Jury room is not the rug, as Ciechowski says it was, that he bought from you in October, 1979.

A That's correct.

(Transcript at 117)

5. The said testimony of ABRAHAM COHEN as he then and there well knew, was false in that ABRAHAM COHEN sold the said rug to Robert Ciechowski in October, 1979.

All of the above is in violation of Title 18, United States Code, Section 1623.

APPENDIX D

AFFIDAVIT OF ALBERT S. DABROWSKI, ASSISTANT UNITED STATES ATTORNEY FOR THE DISTRICT OF CONNECTICUT

Albert S. Dabrowski, being duly sworn, does depose and say:

1. I am an Assistant United States Attorney for the District of Connecticut. As part of my official duties and responsibilities I conducted proceedings before a Federal Grand Jury at Hartford, Connecticut which resulted in the indictment in this case.

2. The Grand Jury investigation resulted from evidence initially acquired and developed by the Federal Bureau of Investigation which, in my opinion, reflected the possibility that certain individuals associated with the Probate Court at Hartford committed violation of Federal criminal statutes including, but not necessarily limited

to, Title 18, United States Code, Sections 1341, 1343, 1951, 2314 and 371 as well as Title 26, United States Code (Internal Revenue Code).

3. One of the allegations investigated by the Federal Bureau of Investigation involved the theft of a Kirman rug which the evidence reflects, in my opinion, was stolen from the Estate of one Marion Reiner, transported in interstate commerce from Connecticut to New York, and sold for $5,000.00. Evidence of this theft, interstate transportation, and value was presented to the Grand Jury and reflected possible violations of Title 18, United States Code, Sections 2314 and 371.

4. In my opinion, it was a material matter to determine whether and how the rug was stolen, who stole it and the circumstances reflecting the movement and transfer of the rug from

Connecticut to New York where it was ultimately recovered. In this regard it was a material matter to the Grand Jury's investigation to determine whether Abraham Cohen had sold or delivered this rug to Robert Ciechowski in October, 1979.

5. In addition, it was also critical to the orderly progress of the Grand Jury investigation to determine whether Abraham Cohen, who had voluntarily appeared before the Grand Jury to "clear up the investigation" was lying to protect himself and others from the consequences of the investigation or, as he repeatedly asserted, was telling the truth at all time during his appearances before the Grand Jury. The testimony of several witnesses was directly contradicted by Abraham Cohen in connection with the allegations that he (Cohen) stole other estate property

and was the recipient of cash payments. Accordingly, it was a matter of critical significance and materiality for the Grand Jury to determine whether or not the testimony of Abraham Cohen was worthy of belief. Without the truthful cooperation of Abraham Cohen the Grand Jury, in my opinion, could not proceed in an orderly or effective manner. In my opinion, the testimony of Abraham Cohen, if false, as alleged, not only hindered buy prohibited continuing progress by the Grand Jury since each of several other witnesses in a position to provide important and valuable information to the Grand Jury had refused to testify based upon claims of privilege under the Fifth Amendment.

/s/ Albert S. Dabrowski
Albert S. Dabrowski
Assistant United States Attorney